(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

W.P.No. 610 /2001

PETITIONER

Beegan Ram, S/o Somar Sai occupation Panchayat Secretary, resident of Village Katkona, Tehsil Ambikapur, Dist. Surguja Chhattisgarh

Versus

RESPONDENTS

1. State of Chhattisgarh Through Secretary, Panchayat, Secretariat D.K. Bhawan, Raipur Chhattisgarh
2. Additional Collector, Dist. Surguja, Chhattisgarh
3. Sub Divisional Officer, Ambikapur, Distt. Surguja Chhattisgarh
4. Sarpanch, Village Panchayat, Katkona, Tehsil Ambikapur, Distt. Surguja Chhattisgarh
5. Chief Executive Officer, Lakhanpur, Tehsil Ambikapur, Distt. Surguja Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

The petitioner respectfully beg to submit as under :-

AFR

28-9-05

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Satish K. Agnihotri, J.

WRIT PETITION NO. 610 of 2001

Beegan Ram

Versus

State of Chhattisgarh and others

POST FOR ORDER ON 28th SEPTEMBER, 2005

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Satish K. Agnihotri, J.

WRIT PETITION NO. 610 of 2001

Beegan Ram

Versus

State of Chhattisgarh and others

Dr. Shailesh Ahuja, counsel for the petitioner.

Mr. Pankaj Shrivastava, Panel Lawyer for the State of Chhattisgarh / respondents 1, 2, 3 & 5.

Ms. Madhu Modi, counsel for respondent No.4

ORDER

(Passed on 28 September, 2005)

The petitioner was appointed as Panchayat Secretary in the Gram Panchayat Katkona on 09.09.1999. The petitioner was issued a show cause notice on 27.02.2000 (Annexure R-3) for financial irregularities committed in distribution of funds of Social Security Pension Scheme, National Old Age Pension Yojna, Jeevan Dhara, Indira Awas Yojna, Maternity Benefit Yojna and Wages of Workers. The petitioner declined to give acknowledgment of the notice served on him. Thereafter, the enquiry was conducted by Panchayat and Social Education Sangatak, Development Block, Lakhanpur, and the report was submitted to the Chief Executive Officer, District Panchayat Sarguja by letter dated 29.06.2000 (Annexure R-5) after removal of the petitioner from the service on 30.05.2000.

2. The petitioner filed an appeal against the order dated 30.05.2000 (Annexure P-3) passed by the Sarpanch, Gram Panchayt Katkona, before the Sub-Divisional Officer, Ambikapur. The Sub-Divisional Officer, Ambikapur vide order dated 07.08.2000 (Annexure P-2) after having

considered the enquiry report which was submitted, after removal of the petitioner from service, came to the conclusion that the resolution dated 18.05.2000 of Gram Panchayat removing the petitioner from the services was valid and legal. Accordingly appeal of the petitioner was dismissed. The petitioner, being aggrieved, filed revision petition before Additional Collector, Sarguja (Ambikapur) under Section 91 of Panchayat Raj Avam Gram Swarj (Amendment) Adhiniyam, 1995, the Additional Collector, Sarguja (Ambikapur) dismissed the revision petition on 16/18.03.2001 confirming the findings and order dated 07.08.2000 passed by the Sub-Divisional Officer, Ambikapur in Revenue Case No. 79/B-121/99-2000.

3. Dr. Shailesh Ahuja, learned counsel for the petitioner submitted that there was no enquiry before the order was passed. It was further denied that any show cause notice was issued to the petitioner and enquiry was conducted without notice or intimation to the petitioner. Learned counsel further submitted that the order passed by Gram Panchayat pursuant to the resolution, later on confirmed by Sub-Divisional Officer (Revenue) in appeal and Additional Collector in revision was bad in law as the appointing authority had not complied with Rule 7 of Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "the Rules, 1999"). Rule 7 of the Rules, 1999, clearly contemplates that no order imposing major penalties shall be passed except after formal enquiry in the manner provided in the rules. Rule 7 reads as under:

> "**7. Procedure for imposing major penalties.** - (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.
> (2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the

basis of allegations and shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing toe defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, fie shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce

documentary evidence, if any, and to have such witness called as he may wish:

Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of

(i) the charges framed against such person and the statement of allegations;

(ii) the written statement of defence if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry-

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in

response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer any where, disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

4. Mr. Pankaj Shrivastava, learned Panel Lawyer for the State of Chhattisgarh / respondents 1, 2, 3 & 5 and Ms. Madhu Modi, learned counsel for respondent No.4, on the contrary, submitted that a show cause notice was issued to the petitioner on 27.02.2000 (Annexure R-3). The petitioner after taking a copy of the notice, declined to acknowledge the receipt as reported by the Notice Server i.e. Gudi Kotwar by way of an affidavit to the Collector that the petitioner had declined to give acknowledgement on the second copy of the notice. Accordingly, the petitioner deliberately did not acknowledge the notice after taking a copy of the notice. Thereafter, the petitioner did not participate in the enquiry. Serious charges of financial irregularities were made against the petitioner and the then Sarpanch. The Sarpanch was removed and the petitioner was also removed from the service by resolution of Gram Panchayat after the petitioner refused to accept the notice. Learned counsel for the respondents relied on the decision of the Supreme Court in **Indra Bhanu Gaur vs. Committee, Management of M.M. Degree College and others** reported in **(2004) 1 SCC 281** in support of their contention.

5. After hearing learned counsel for the parties and perusing the records, I am of the opinion that there is apparent error writ large on the

records. The contention of the respondents that a show cause notice dated 27.02.2000 (Annexure R-3) was issued to the petitioner and the petitioner had declined to acknowledge the receipt as reported by the Gudi Kotwar, does not seem to be correct. The alleged show cause notice was signed by Sarpanch, Gram Panchayat Katkona on 27.02.2000 and it was served on 24.02.2000 as per the affidavit dated 21.11.2000 of Mr. Bandhu Das, Gudi Kotwar, Village Katkona. This is not possible to serve three days before, the notice was signed by the Sarpanch, Gram Panachayat, Katkona. Thus, the contention of the respondents that the petitioner had declined to give acknowledgement on the second copy of the notice is erroneous and un-acceptable.

6. Further, the impugned resolution to remove the services of the petitioner was passed on 18.05.2000 before completion of the enquiry and as the enquiry report was submitted on 29.06.2000. Even the order of removal, pursuant to the resolution of the Gram Panchayat dated 18.05.2000, was passed on 30.05.2000 much before completion of the enquiry. It cannot be held that the removal order was passed after holding proper enquiry into serious charges of financial irregularities and misappropriation of the Panachayat funds. Without examining the allegations as contained and as considered in the enquiry report submitted after removal of the petitioner, I am of the view that statutory provision of Rule 7 of the Rules, 1999 have not been complied with in its letter and spirit, which is a precondition before imposing a major penalty on a member of the panchayat service, as the petitioner is admittedly a member of the panchayat service.

7. With regard to exercise of power by the High Court under Articles 226 and 227 of the Constitution of India, the Hon'ble Supreme Court in

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catena of decisions have laid down the principles of law that the High Court has jurisdiction and power to interfere if the Court is satisfied that the error is manifest and apparent on the face of the proceedings, clear ignorance and utter disregard of provisions of law and/or a grave injustice or gross violation of justice has occasioned thereby. In the present case, Revenue Authorities / Tribunals have completely ignored the statutory provisions of Rule 7 of the Rules, 1999 and there is manifest error of the facts on the face of records,without requiring any investigation or enquiry. Admittedly, the alleged show cause notice dated 27.02.2000 (Annexure R-3) could not have been served through the Gudi Kotwar on 24.02.2000, three days before the issue of show cause notice. No notice as contemplated under Rule 7 of the Rules, 1999 was issued to the petitioner. Prior to submission of the enquiry report on 29.06.2000 (Annexure R-5), the Gram Panchayat resolved to remove the petitioner from his service on 18.05.2000 and pursuant thereof order of the removal was passed on 30.05.2000 (Annexure P-3).

In view of foregoing, the petition is allowed with consequential benefits. Resolution dated 18.05.2000 pursuant thereof order of removal dated 30.05.2000 (Annexure P-3), order dated 07.08.2000 (Annexure P-2) passed by the Sub-Divisional Officer, Ambikapur in Revenue Case No.79/B-121/99-2000 and order dated 16/18.03.2001 (Annexure P3) passed by the Additional Collector, District Sarguja in Revision Petition No.6/B-121/2000-2001 are set aside and quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Sarma